RECENT CASES

CORPORATIONS—FOREIGN CORPORATIONS—"DOING BUSINESS IN THE STATE".—BROOKFORD MILLS INC. v. BALDWIN ET AL., 139 N. Y. SUPP., 195.—*Held,* that a foreign corporation, which sends its product into another State for sale through a commission merchant, who transacts the business, makes the sales, and receives the consideration, is not "doing business" in the State.

The words "doing business" under most State statutes should be construed to mean the doing of any substantial part of the business for which the corporation was organized. *People v. Horn Silver Mining Co.,* 105 N. Y., 76. The maintenance of an office by a foreign corporation and the carrying on of any of its usual business within a State, is generally held to be "doing business"; and by weight of authority, the carrying on of any of its ordinary business alone is enough. *Ginn v. N. E. Mfg. Co.,* 92 Ala., 135;*Lamb v. Lamb,* Fed. Cas., 8018; *International Text Book Co. v. Connelly,* 124 N. Y. Supp., 257. Continuance of business is generally necessary; a single act not being enough to bring it within the meaning of the statute. *National Carbon Co. v. Bredel Co.,* 193 Fed., 897; *Del. & Hudson Canal Co. v. Mahlenbrock,* 63 N. J. Eq., 281; *Penn. Collieries Co. v. McKeever,* 183 N. Y., 76; *Cooper Mfg. Co. v. Ferguson,* 113 U. S., 727. Some cases hold that the doing of a single act, if within the usual course of ordinary business for which the corporation was organized, is "doing business". *Muller Mfg. Co. v. First National Bank of Dotham,* 57 Sou., 762; *Lamb v. Lamb, supra.* A foreign corporation is not "doing business" if it sells and delivers goods through drummers and common carriers. *Lehigh Portland Cement Co. v. McLean,* 149 Ill. App., 360; *Droege & Ahrens v. Ott Mfg. Co.,* 163 N. Y., 466; *Wolf-Dwyer Co. v. Bigler,* 192 Pa. St., 466; *Green v. Chicago, Burlington & Quincy R. R. Co.,* 205 U. S., 530. Nor is it "doing business" when it consigns goods to factors or merchants to sell on commission. *Havens & Geddes Co. v. Diamond,* 93 Ill. App., 557; *Crocker v. Muller,* 83 N. Y. Supp., 189; *Wolf-Dwyer Co. v. Bigler, supra.* But it is "doing business" if it maintains an agent who has the power to make binding contracts. *Irons v. S. L. & G. H. Rodgers,* 166 Fed., 781 The general rule in interpreting State statutes which impose conditions on the doing of business by foreign corporations would seem from the above to demand that the business be permanent in character, continuous in its nature, general in its scope, and carried on directly by the corporation itself, before it will be deemed to be "doing business".

CRIMINAL LAW—ACCESSORY BEFORE THE FACT—ACTS CONSTITUTING.—PEOPLE V. POLLAK, 139 N. Y., SUPP., 831.—*Held,* that one inciting boys under sixteen years of age to a vicious course of general conduct, and holding himself out to them as willing to purchase any silk which they may procure in any manner, is not a principal in a specific larceny by the

boys of silk, so as to destroy the character of his act as a receiver of stolen goods.

The *New York Penal Code,* Sec. 29, abolishes the common law distinction between a principal and an accessory before the fact, and makes the accessory a principal in the crime. The question, therefore, was whether the conduct of the defendant was such as to make him an accessory before the fact at common law. An accessory before the fact is one who, being absent at the time the crime is committed, yet procures, counsels, or commands another to commit it. 1 *Hale Pleas of the Crown,* 615; *Trial of Aaron Burr,* 8 U. S. (4 Cranch), 470; *U. S. v. Hartwell,* 26 Fed. Cas., 196. And one is responsible for the wrong which directly flows from his corrupt intentions. *Spies v. People,* 122 Ill., 1. If he gives directions vaguely and incautiously, and the person receiving them acts according to what he might have foreseen would be the understanding, he is responsible. *Spies v. People, supra.* It is not necessary that the acts or words of the accessory should directly incite or expressly command the principal to commit the crime; it is enough if it appears that they were intended to secure the crime, and that they effected that result. *Sage v. State,* 127 Ind., 15. Under these last rulings it would seem as if the conduct of the defendant in the principal case might be construed so as to convict him of being an accessory to the larceny. The case of *Vincent v. State,* 9 Tex. App., 46, is similar, but brings out a distinction which undoubtedly affected the ruling in the principal case. In the Texas case the defendant encouraged two boys to procure certain hogs, promising to pay a stated price for them. Subsequently the boys, without the defendant's presence or coöperation, stole the hogs designated by him, and delivered them to him. The defendant was held to be an accessory before the fact. Here the specific property was designated; in the principal case, no specific property was pointed out. This distinction is more apparent than real. The conduct of the defendant in each case is equally perversive of the welfare of society, and incites and produces criminal acts in each instance. It would seem as if public policy should require the punishment of the defendant in each case.

CRIMINAL LAW—REASONABLE DOUBT.—AYER V. TERRITORY OF NEW MEXICO, 201 FED., 498.—*Held,* that a charge that "a reasonable doubt is one for which a reason could be given based on the evidence or want of evidence in the case" destroys the rule of reasonable doubt, substitutes for a reasonable doubt a demonstrable doubt, logically and conclusively sustained by the evidence or the want of it, and places too heavy a burden upon the defendant.

The definition of a reasonable doubt as one for which a reason could be given based on the evidence or want of evidence in the case, has been laid down in several States, *Hodge v. State,* 97 Ala., 37; *Vann v. State,* 83 Ga., 44; *State v. Jefferson,* 43 La. Ann., 995; upon the ground that it guards against capriciousness, conjecture, indulgence of speculation upon possibili-